IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.MC.No. 3440 of 2007(Y)

CC.206/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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PETITIONER:

C.RATNAKUMARI, D/O.RAMAN MELAKKAM,
AGED 58 YEARS, VAKKAYIL HOUSE, MELAKKAM,
ANAKKAYAM ROAD, THADATHIPARAMBU, MANCHERI.

BY ADV. SRI.C.KHALID

RESPONDENTS:

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1. KONARI MOIDU, S/O.MOIDEEN, AGED 55 YEARS, KONARI HOUSE, NEAR ARIYALLOOR RAILWAY STATION, P.O.ARIYALLOOR.

2. A.ALAVIKUTTY, AGED 55 YEARS, S/O.MOIDEENKUTTY, AGED 55 YEARS, AVALAN VEEDU, PONMALA, KOTTAKKAL, MALAPPURAM DISTRICT.

3. STATE REPRESENTED BY SUB INSPECTOR OF POLICE, PARAPPANANGADI POLICE STATION P.O., PARAPPANANGADI.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3440 OF 2007

Dated this the 26th day of November, 2007

O R D E R

The petitioner-a woman, faces indictment in a prosecution for the offences punishable under Section 420 read with 34 IPC. Cognizance has been taken on the basis of the final report submitted by the police after due investigation. The crime in turn was registered on the basis of a private complaint by the learned Magistrate and referred to the police under Section 156(3) Cr.P.C.

2. The petitioner has entered appearance before the learned Magistrate. She has already been enlarged on bail. Pre-charge hearing is not over and charges have not been framed so far. The petitioner has rushed to this Court with this petition under Section 482 Cr.P.C. with a prayer that the proceedings against her may be quashed invoking extraordinary inherent jurisdiction under Section 482 Cr.P.C.

3. The learned counsel for the petitioner submits that the allegations against the petitioner are groundless. Even if the

allegations were accepted, only a civil liability is revealed and there is no incident of criminality at all.

4. Normally and ordinarily, to claim premature termination of proceedings, an indictee has to take resort to the provisions relating to discharge under the Code. The Cr.P.C. does contemplate a rare situation where notwithstanding the fact that cognizance has been taken on the basis of a police report, the charges may be groundless. In such an event, normally and ordinarily the indictee must claim premature termination by pleading discharge at the stage of Section 239/240 Cr.P.C. Not that this court lacks jurisdictional competence in an appropriate case in the interest of justice to invoke the extraordinary inherent jurisdiction under section 482 Cr.PC. and quash such criminal prosecution, but that must be an exceptional case and compelling and satisfactory reasons must be shown to insist. Only in the event of gross failure of justice and miscarriage of justice need the powers under section 482 Cr.P.C. be invoked by this court. In the normal run of case, premature termination may be claimed only under section 239 Cr.P.C.

5. In the facts and circumstances of the case, I find

absolutely no reason to invoke extraordinary inherent jurisdiction under section 482 Cr.P.C. It is for the petitioner to claim such discharge before the learned Magistrate. I take note that she has already entered appearance before the learned Magistrate also.

6. In the result, this petition is dismissed but with the specific observation that the petitioner's claim for discharge must be considered on merits by the learned Magistrate under section 239 Cr.P.C. and appropriate decision taken expeditiously.

7. The learned counsel for the petitioner submits that if unnecessary insistence were made on the personal appearance of the petitioner, till the question of discharge is considered that would work out great prejudice and hardship. I find no reason as to why the learned Magistrate should so insist. The petitioner can apply before the learned Magistrate and the learned Magistrate must certainly permit the petitioner to appear through counsel until a decision is taken on the question of charge/discharge under section 239/240 Cr.P.C..

(R.BASANT, JUDGE)

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